

1 Brett McDonald  
 2 6010 118<sup>th</sup> Ave SE  
 3 Bellevue, WA  
 4 98006  
 5 310.775.7997

FILED ENTERED  
 LODGED RECEIVED

SG MAY 09 2017

AT SEATTLE  
 CLERK U.S. DISTRICT COURT  
 BY WESTERN DISTRICT OF WASHINGTON DEPUTY

UNITED STATES DISTRICT COURT  
 WESTERN DISTRICT OF WASHINGTON AT SEATTLE

17 CV-00724 JCC  
 Case No.:

BRETT MCDONALD, an individual,

Plaintiff,

vs.

BORA GURSON, an individual and  
 ROXYCAR INC., a Delaware  
 corporation,  
 Defendants.

COMPLAINT FOR MONEY  
 DAMAGES; BREACH OF  
 CONTRACT; PROMISSORY  
 ESTOPPEL AND UNJUST  
 ENRICHMENT

Brett McDonald, the plaintiff, hereby alleges the following:

**NATURE OF THE ACTION**

1. This is an action for breach of contract and related claims arising out of oral and written agreements pursuant to which Plaintiff provided operational, financial and other services to Defendants.

2. Defendant Bora Gurson ("Gurson") refused to recognize the valuable services performed under the contract and instead asked Plaintiff to reduce his agreed 10% equity interest in RoxyCar Inc. (the "company"). Gurson then breached his agreement with Plaintiff. After that, he threatened, harassed and sued Plaintiff and his family in an attempt to force a "low-ball" settlement.

3. Plaintiff seeks as relief \$1,400,000 in damages, plus costs of suit.

SEA 84492 Summons ISS

**I. THE PARTIES**

4. Plaintiff Brett McDonald (“McDonald”) attended UCLA School of Law, worked at a large law firm, and has served as the Chief Executive Officer for two technology startups. He has also worked with new businesses in development and obtaining financing. He is married, and lives with his wife and 4 children in the Seattle area.

5. Bora Burson (“Gurson”) is a businessman living in Honolulu Hawaii. He is the CEO and primary shareholder of RoxyCar Inc.

6. RoxyCar Inc. (the “company”) is a Delaware corporation doing business throughout the United States with principal offices located in Hawaii.

**II. JURISDICTION AND VENUE**

7. Federal diversity jurisdiction exists pursuant to 28 U.S.C. § 1332 because the plaintiff is a resident of a different state from the defendants and because the value of the matter in controversy exceeds \$75,000.

8. Venue in this district is proper pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions on which the claim is based occurred in the Western District of Washington.

9. Venue in this district is also proper pursuant to 28 U.S.C. § 1391(b)(3) because Gurson has consented to personal jurisdiction by suing McDonald in this district in the Superior Court of Washington, in and for King County, styled *Bora Gurson v. Brett McDonald and Jane Doe McDonald*, Cause No. 17-2-07709-7 SEA. This action has been removed to this court under 28 U.S.C. § 1367.

**III. FACTS**

10. **1st Meeting and Agreement – January 18, 2017.**

1           11. McDonald first met Gurson on January 18, 2017 in Honolulu Hawaii.  
2 The meeting was organized by Blue Startups a Hawaii-based technology investor  
3 and incubator.

4           12. When asked, McDonald provides consulting services to technology  
5 companies funded by Blue Startups. Gurson's company, RoxyCar, was one of  
6 those companies. A copy of the emails between McDonald and a representative  
7 from Blue Startups setting up the meeting between McDonald and Gurson is  
8 attached as Exhibit A.

9           13. Gurson saw that McDonald has had reasonable success, in particular  
10 as CEO of Vantage Sports, Inc. This included raising more than \$3 million to fund  
11 the company, successfully setting up overseas operations and continuing to this  
12 day as its CEO.

13           14. Gurson wanted to buy and sell used cars. Gurson had employed a  
14 software engineer to automate this process and organized as a corporation.

15           15. Gurson explained his business in broad terms and described what he  
16 needed to do in order to make the business successful. The company required help  
17 in financing, finding and pitching investors, operations, further software  
18 development and financial modeling. McDonald has a background in all of these  
19 areas and was intrigued by the business opportunity.

20           16. Gurson and McDonald started to discuss a role in the company for  
21 McDonald and Gurson presented McDonald with a Confidentiality Agreement and  
22 McDonald signed. A copy of the Confidentiality Agreement is attached as Exhibit  
23 B.

24           17. McDonald extended his stay in Honolulu for an extra day and on  
25 Saturday, January 21, 2017, Gurson and McDonald agreed that in exchange for

1 10% of the company, McDonald would handle operations, help with financing and  
2 other matters.

3 18. **McDonald Performs – January 22 - March 4, 2017.**

4 19. McDonald immediately got to work as an executive of the company.

5 This performance included the following:

- 6 a) Setting up company email and communications (and begins use of  
7 his company email account ([brett@roxycar.com](mailto:brett@roxycar.com));
- 8 b) Advising as to potential business structure for an investment fund;
- 9 c) Getting in touch with potential investors;
- 10 d) Meeting with banks including Silicon Valley Bank about potential  
11 funding;
- 12 e) Devising the company's first projected financial model;
- 13 f) Flying to San Francisco on McDonald's own expense to attend  
14 investor meetings with Javelin Venture Partners, Cordillero  
15 Partners and more;
- 16 g) Planning operations and negotiating with potential 3rd party  
17 vendors;
- 18 h) Recruiting technical talent and negotiating with potential  
19 employees;
- 20 i) Planning short and long-term technical development;
- 21 j) Setting a meeting with McDonald's personal and valuable contacts  
22 at CoPart Inc.;
- 23 k) Introducing Gurson to McDonald's personal and valuable legal  
24 contacts at Orrick Herrington and Sutcliffe who Gurson  
25 interviewed and hired as company counsel;

1 l) Negotiating the company's term sheet with Javelin Venture  
2 Partners;

3 m) Saving Gurson personally 12% dilution on the term sheet via the  
4 Option Pool.

5 **20. McDonald Begins Helping Fundraise – January 22, 2017.**

6 21. Immediately upon coming to an agreement, McDonald got to work as  
7 promised. Acting as an executive of the company, McDonald reached out to his  
8 contact at Silicon Valley Bank whom he had worked with on previous companies.

9 22. McDonald has a relationship with Geir Hansen, Managing Director of  
10 Emerging Technologies and met over lunch to discuss financing for RoxyCar. A  
11 copy of McDonald's email to Hansen is attached as Exhibit C.

12 **23. McDonald is Issued A Company Email Address – January 30,**  
13 **2017.**

14 24. Acting in his capacity as Chief Operations Officer, McDonald setup  
15 company email addresses and a internal messaging service and started  
16 communicating via [brett@roxycar.com](mailto:brett@roxycar.com). A copy of an email from McDonald's  
17 company email is attached as Exhibit D. Additional emails from this address  
18 appear in subsequent email exhibits.

19 **25. McDonald and Gurson Strategize About Investor Pitches –**  
20 **February 2, 2017.**

21 26. On February 2, 2017, Gurson asks McDonald about a potential  
22 investor stating: "Seems like Shayna from the xg fund is invested in another car  
23 company which is about to go out of business.. What can we do in a situation like  
24 this to make sure she is not fishing for info?" A copy of the email is attached as  
25 Exhibit E.

1           **27. McDonald Flies to San Francisco To Attend Investor Meetings –**  
2 **February 7, 2017.**

3           28. On February 7, 2017, McDonald flew to San Francisco to attend  
4 investor meetings as part of the executive team of RoxyCar. Emails setting up,  
5 confirming and following up on these meetings are attached as Exhibit F and  
6 Exhibit G.

7           29. McDonald directly and closely involved in pitching and following up  
8 with investors. In these meetings he acted on behalf of the company.

9           30. An example of an email to a prospective investor where McDonald  
10 outlines what the company will do for the “next steps” in the investment decision  
11 is attached as Exhibit H.

12           **31. McDonald Plans Offshore Operations – February 13, 2017.**

13           32. After drawing up specifications for technical and manual operations,  
14 McDonald began interviewing and negotiating with potential offshore vendors. A  
15 copy of an email introducing McDonald to one such vendor is attached as Exhibit  
16 I.

17           **33. Gurson Threatens Breach, But Re-Commits to Agreement –**  
18 **February 13, 2017.**

19           34. On February 13, 2017, Gurson called McDonald and said he was  
20 having second thoughts about the agreement. He stated for the first time that he  
21 now wanted the agreement to require some part of the 10% to be contingent upon  
22 McDonald helping to secure investment or partnership with a company called  
23 CoPart. McDonald had a pre-existing relationship with executives at CoPart and  
24 had arranged a meeting.

1           35. McDonald objected, stating that (1) they had already agreed, (2) his  
2 services were worth the agreed 10% regardless of any potential deal with CoPart  
3 and (3) it was not in the company's best interest to have McDonald solely focused  
4 on getting money from one potential investor.

5           36. Gurson agreed, stating, "okay, we'll stick with the 10%." They then  
6 continued planning and strategizing for the future.

7           37. **Gurson Hires Philip Maymin As Chief Analytics Officer –**  
8 **February 16, 2017.**

9           38. Again, McDonald provided Gurson with a valuable connection when  
10 he introduced him to Dr. Philip Maymin. Dr. Maymin is one of the most qualified  
11 statistical experts in the world, holding degrees from Harvard and a Ph.D. from the  
12 University of Chicago. McDonald helped negotiate the terms of Maymin's hiring  
13 for 5% of the company.

14           39. After reaching an agreement with Dr. Maymin, Gurson emailed:  
15 "Deal!!! And it looks like our friend Gus is gonna be on board too.. I'm excited to  
16 work with both of you!!"

17           40. "Gus" is a reference to a potential investor. A copy of the emails  
18 where 5% is agreed to for Dr. Maymin is attached as Exhibit J.

19           41. **Gurson Announces the Complete RoxyCar Executive Team –**  
20 **February 16, 2017.**

21           42. After Gurson hired Dr. Maymin as Chief Analytics Officer, he  
22 personally announced that the full executive team was complete. The email from  
23 Gurson to McDonald, Maymin and Kaan (the company's software engineer) is  
24 titled: "Roxycar Executive team" and Gurson writes:  
25



1           “Hello Gents, I'm excited to announce that we have formed the Roxy  
2 Car Executive team which will execute this arbitrage opportunity as well as  
3 create amazing analytic/ technologies for the auto industry. Let's all give it  
4 all we have so that we can sell sell this company to the highest bidder in the  
5 near future! I strongly feel that this team has everything it takes to make it  
6 happen. Let's all have a stand-up meeting so we can all talk and set the path  
7 for the coming weeks. How does 11:30am HST tomorrow work for  
8 everyone? Kaan(aka the man behind the curtain of Roxy) will join us too.”  
9 A copy of this email is attached as Exhibit K.

10       43. McDonald, acting in his capacity as COO, provided Dr. Maymin with  
11 his company email address.

12       44. **McDonald Introduces Gurson to His Trusted Company Counsel.**

13       45. McDonald again used his experience and connections to introduce  
14 Gurson to Andrew Erskine (Erskine) a partner at Orrick, Herrington & Sutcliffe  
15 LLP. McDonald attended UCLA School of Law with Erskine and had worked with  
16 him in the past and knew him to be an excellent lawyer for startup companies such  
17 as RoxyCar. Gurson interviewed Erskine and hired him and his law firm as  
18 company counsel. A copy of the email introducing Gurson to Erskine is attached as  
19 Exhibit L.

20       46. **McDonald Negotiates Offshore Operations – February 20, 2017.**

21       47. McDonald had multiple phone calls with prospective vendors, made  
22 financial plans and training guides. An email showing negotiations with a potential  
23 vendor is attached as Exhibit M.



1           **48. McDonald Negotiates the Business Terms of the Term Sheet with**  
2           **Javelin Venture Partners and Saves Mr. Gurson 12% Personal Dilution –**  
3           **February 17-28.**

4           49. By February 17, 2017 the company had received a term sheet from  
5 Javelin Venture Partners.

6           50. A term sheet is a preliminary step to take due diligence and potentially  
7 proceed with an investment. Due diligence is always required, including whether  
8 there is a fundamental change in the status of the founding team, i.e. they stop  
9 working together.

10          51. McDonald provided a markup of the crucial business terms of the  
11 Term Sheet to improve the company's and Gurson's personal deal. A copy of the  
12 email attaching the markup is attached as Exhibit N.

13          52. Specifically, McDonald negotiated the "employee option pool" for  
14 future hires from 15% suggested by Javelin to 3%. This *solely benefited* Gurson as  
15 McDonald and Javelin's stock was going to be granted at the same time.

16          53. The reason McDonald could negotiate a 15% option pool down to 3%  
17 was because with McDonald handling operations and financial modeling for his  
18 10%, the company did not need to make any more Executive hires.

19          54. After initial negotiations, McDonald continued to act on behalf of the  
20 company to finalize and sign the term sheet.

21          55. On February 22, 2017, McDonald writes to Javelin company counsel  
22 and states, "We look forward to signing and closely quickly." A copy of this email  
23 is attached as Exhibit O.

24          56. Mr. Gharakhanian, Javelin's counsel, interacts with McDonald as an  
25 executive of the company in his reply.

1        57. Following on-the-phone negotiations, McDonald emails the group  
2 with last revisions where again he “dropped the option pool back down with the  
3 understanding that founding team will be issued stock in NewCo and thus will not  
4 require options.” A copy of this email is attached as Exhibit O.

5        58. McDonald pressed this point, saving 12% dilution purely to benefit  
6 Gurson and of course with the expectation that his agreement for 10% would be  
7 honored.

8        59. McDonald then gathered the required signatures for the finalized term  
9 sheet on February 28, 2017.

10        **60. Employment Agreement Includes McDonald’s 10%.**

11        61. Having been proceeding under the contract that was discussed and  
12 agreed, McDonald sent Gurson a copy of an employment agreement including the  
13 10% stock grant on February 21, 2017, to which Gurson replied, “They look good.  
14 Andrew will send his versions too.. I’m assuming they will be similar if not  
15 identical.”

16        62. Andrew is Erskine and McDonald agrees that company counsel  
17 should draft the legal components of the employment agreement. A copy of the  
18 email is attached as Exhibit P.

19        **63. Gurson Makes Sure He Understands the Term Sheet In Relation**  
20 **to McDonald’s 10% – February 22, 2017.**

21        64. The Term Sheet from Javelin had a section dealing with Founders  
22 Stock Vesting. McDonald was helping Gurson to negotiate more up-front vesting  
23 for his stock to benefit Gurson.

24        65. Gurson was concerned that this favorable vesting might apply to  
25 McDonald’s 10% as well and emailed: “I was reading though the TS. I just want it

1 make sure we are both in the same page about the vesting. It will be the standard  
2 and typical vesting for your portion of equity with the 1 year cliff.”

3 66. McDonald replied: ““Yes, that is our deal. We are negotiating your  
4 vesting on the TS. Notice that is states that it will be "vary by employee."”

5 A copy of this email is attached as Exhibit Q.

6 **67. McDonald and Gurson fill out the “Corporate Questionnaire”**  
7 **Granting McDonald 10% of the Corporation – February 24, 2017.**

8 68. Corporate counsel had advised that it was best to organize a new  
9 company rather than use the corporation Gurson had previously established.

10 69. To that end, Erskine and his team at Orrick emailed Gurson and  
11 McDonald a “Corporation Questionnaire” to get information on all Founder Stock  
12 grants, company directors/officers and other corporate formation.

13 70. This Questionnaire was to be used by corporate counsel to get all  
14 corporate documents in place.

15 71. McDonald and Gurson filled out the Questionnaire together while on  
16 the phone with Gurson naming stock grants, directors, etc. and McDonald emailed  
17 the completed Questionnaire to the Orrick team, copying Gurson on the email.

18 72. The Questionnaire included the agreed upon equity grant for  
19 McDonald of 10%. Gurson was to receive between 63% and 69% depending on  
20 how much of the remaining portion of the round was raised from investors besides  
21 Javelin.

22 73. As stated on the Questionnaire and in McDonald’s email to corporate  
23 counsel, McDonald’s grant was “fixed” at 10%. Gurson in no way disputed this  
24 completed Corporate Questionnaire and personally directed its completion.

1        74. A copy of the Corporate Questionnaire as completed by Gurson and  
2 McDonald is attached as Exhibit R. A copy of the email to the corporate team and  
3 copying Gurson is attached as Exhibit S.

4        75. **Gurson Again Threatens to Breach His Agreement with**  
5 **McDonald – February 25, 2017.**

6        76. On February 25, 2017 after the Term Sheet had been finalized and  
7 signed and Questionnaire filled out, Gurson emailed McDonald in relevant part:  
8 “Now since things have changed I think that the 10 percent equity does not  
9 properly represent our initial agreement,” and stated that in his view it was “fair”  
10 that McDonald, “receive 5% and an additional 2.5% if we make any sort of long  
11 term deal with Copart and an additional 2.5% if Copart invests \$750k or more and  
12 opens up a \$5M credit line for Roxy.” A copy of this email is attached as Exhibit  
13 T.

14        77. McDonald and Gurson had an approximately one hour-long phone  
15 call where McDonald reminded Gurson of their agreement, and all his actions for  
16 the benefit of the company and Gurson personally. McDonald asked him not to  
17 break their agreement. Gurson said he would think about it.

18        78. **McDonald Asks If Gurson Will Honor Their Agreement –**  
19 **February 26.**

20        79. On February 26, McDonald asked if Gurson was going to persist in  
21 his threatened breach. He asked via the company’s chat application “Slack”, which  
22 McDonald had previously set up for the company:

23        “What did you decide about our relationship?”

24        Gurson replied: “I don't want to break up, Have you thought about it?”

25        McDonald replied: “Well I haven't changed”

1 Gurson replied: "I'm having a hard time. I need more time. You sure you  
2 are gonna be handle the operations?"

3 McDonald replied: "Yes"

4 Gurson replied: "Let's talk in the morning please. I'll call you when I wake  
5 up."

6 McDonald replied: Okay! A copy of this conversation is attached as Exhibit  
7 U.

8 80. The next day, during a long conversation, McDonald also notified  
9 Gurson that if he persisted in refusing to honor their agreement, McDonald would  
10 need to notify Javelin of that fact.

11 81. McDonald reminded Gurson that the company had received a due  
12 diligence request list which included required disclosure of any employment  
13 issues, issues that might give rise to litigation or any issues with company stock  
14 ownership. Gurson said that he was not going to honor the agreement.

15 82. **Hoping For A Resolution and In Accordance with Javelin's Due**  
16 **Diligence Request, McDonald Notifies Javelin Venture Partners of the**  
17 **Problem.**

18 83. McDonald was still hopeful that Gurson would not breach. He thought  
19 that Javelin could convince Gurson that doing so was immoral, bad business and  
20 contrary to law.

21 84. Furthermore, the company had received a due diligence request list  
22 from Javelin that required disclosure of just this type of issue.

23 85. McDonald was still an officer/employee of the company and was  
24 obligated to disclose the issue to Javelin.

25 86. **One More Try – March 4, 2017.**

1           87. On Saturday, March 4, McDonald emailed Gurson, again requesting  
2 that his contract be honored.

3           88. Shortly after sending the email, McDonald was notified by Google  
4 Security that his email account ([brett@roxycar.com](mailto:brett@roxycar.com)) was signed into via a Mac in  
5 Honolulu, Hawaii. A copy of these notifications is attached as Exhibit V.

6           89. McDonald was also notified that his account password had been  
7 changed. Gurson was the only other person besides McDonald that had  
8 administrative privileges over company email. Gurson was in Honolulu Hawaii at  
9 the time.

10          90. Gurson gave no notice of this access, did not request access and gave  
11 no reason for shutting McDonald out of his email account. Fortunately McDonald  
12 had backed up his email account prior to this invasion of privacy.

13          91. **The Threats Commence – March 20, 2017.**

14          92. Gurson then hired two lawyers, Tod Ratfield of Walnut Creek, and  
15 David Fuad of Orrick Herrington to write to McDonald. Mr. Fuad first wrote on  
16 March 20, 2017 at 4:10pm. Mr. Ratfield first wrote on March 20, 2017 at 8:51pm  
17 just 4.5 hours after Mr. Fuad.

18          93. A copy of correspondence from Mr. Fuad is attached as Exhibit W. A  
19 copy of correspondence from Mr. Ratfield is attached as Exhibit X (settlement  
20 offer removed).

21          94. Mr. Ratfield threatened to sue McDonald into bankruptcy if he  
22 refused to take a bad settlement offer.

23          95. Attorney Jon Adams from New York (“Adams”) contacted Messrs.  
24 Ratfield and Fuad, notified them that he was representing McDonald in  
25 negotiations, and objected to Gurson and Mr. Ratfield threatening to sue the

1 injured party and his wife and 4 kids into bankruptcy as a tactic to force him into a  
2 bad settlement. A copy of this email is attached as Exhibit Y (settlement offer  
3 removed).

4 96. Adams also objected that McDonald helped to hire Orrick to represent  
5 RoxyCar, and it now sought to turn on him and may have confidential information  
6 and a conflict.

7 97. Mr. Ratfield started a settlement negotiation but then abruptly  
8 departed the case, toning down the threats but still threatening it was “out of his  
9 hands,” i.e. Gurson would sue the injured party, McDonald, if he didn’t take the  
10 settlement being offered.

11 98. McDonald interpreted the “bankruptcy” threat as a threat to go after  
12 his entire family.

13 99. Mr. Fuad confirmed Orrick would not be involved.

14 **100. What Confidential Information?**

15 101. Attorney Adams repeatedly asked in correspondence to Messrs.  
16 Ratfield and Fuad that they identify any information Gurson believed McDonald  
17 had. (See Exhibit Y). No reply was ever received.

18 102. Adams also represented that McDonald was not aware of any  
19 Confidential Information or any information that could harm Gurson’s interests in  
20 any way. Id. Adams asked repeatedly what they wanted. No reply was received –  
21 only “it’s out of my hands” and more threatening language. Id.

22 **103. Ratfield Won’t Respond.**

23 104. At no point does Mr. Ratfield reply with an answer, following  
24 repeated requests to identify confidential information that McDonald could have  
25 and/or that needs to be returned, deleted or destroyed.



1           **105. Fuad Won't Respond.**

2           106. At no point does Fuad reply with an answer about any confidential  
3 information that McDonald could have and/or that needs to be returned, deleted or  
4 destroyed.

5           **107. Gurson Won't Respond.**

6           108. After Fuad confirmed that Orrick was no longer representing  
7 Gurson/RoxyCar in the matter and Ratfield confirmed that the matter was also "out  
8 of his hands," and he was no longer counsel, Attorney Adams asked Gurson to  
9 identify information Gurson believed McDonald had. A copy of this email is  
10 attached as Exhibit Z. No reply was ever received.

11           **109. Gurson Makes Good On His Threat to 'Settle or Be Sued,' Sues**  
12 **McDonald, Sues His Wife, and Sends Process Server to Their Home at Night**  
13 **at Kids' Bedtime – April 5, 2017.**

14           110. After Messrs. Ratfield and Fuad left abruptly or were conflicted out,  
15 Gurson carried out his threat and hired attorney Mike Gossler in Seattle. He sued  
16 McDonald and his wife in the Superior Court for King County accusing McDonald  
17 of various claims all stemming from the unsupported belief that McDonald had  
18 confidential information or would somehow compete with RoxyCar, and adding a  
19 claim based on McDonald's reporting that RoxyCar had breached/fired him to his  
20 new and established business contacts.

21           111. Despite being told that Attorney Adams had been representing  
22 McDonald in settlement negotiations, Gurson sent a process server after dark to the  
23 McDonald's home on April 5, just as it was bedtime for his 4 kids.

24           112. Continuing to make good on his promise to 'take my bad settlement or  
25 I'll sue you,' Gurson even somehow convinced Mr. Gossler to sue McDonald's

1 wife, who had nothing to do with any of this, as well as to seek “marital property”  
2 without any investigation or evidence that any property had even been transferred.

3 **113. Gossler Won’t Respond.**

4 114. Attorney Adams wrote to Mr. Gossler the next day, April 6, objecting  
5 that McDonald’s wife had been sued and a process server sent in the dark at the  
6 kids’ bedtime.

7 115. Adams stated again, “[McDonald] doesn’t have any confidential or  
8 “evaluation information.” A copy of this email is attached as Exhibit AA.

9 116. Adams stated a settlement offer, demanded Mrs. McDonald be  
10 dropped from the lawsuit, and requested again to know what confidential  
11 information McDonald was alleged to have so he could return it, destroy it, or  
12 confirm it was destroyed.

13 117. McDonald was still bewildered, because he didn’t have any  
14 confidential information. Plaintiff also requested an electronic copy of the  
15 complaint. Gossler did not reply.

16 118. On April 8, 2017, Adams again wrote to Mr. Gossler, “Mr. McDonald  
17 has never refused to return anything and does not believe he has any “Evaluation  
18 Material.” We have never received an answer, and are now on the third attorney,  
19 still asking...” A copy of this email is attached as Exhibit BB.

20 119. Finally, Gossler responded, but did not specify any confidential  
21 information that Gurson alleged McDonald had and refused to return.

22 **120. A Settlement Is Reached – April 10, 2017.**

23 121. On April 10, 2017, Mr. Gossler extended a settlement offer:

24 “the simple solution to the lawsuit is for him to stipulate to an order  
25 that no information provided to him by Mr. Gurson will be disclosed to any third

1 party, that any information he may have will be destroyed, that he will not speak  
2 with anyone further about the Roxycar business model, and that he will not use any  
3 information provided to him to pursue the Roxycar business.”

4 A copy of this email is attached as Exhibit CC.

5 122. McDonald accepted this offer via Mr. Adams:

6 “Mr. McDonald (and his wife, while still objecting to being named) are  
7 pleased to accept the settlement offer you have extended for Mr. Gurson,  
8 specifically:

- 9 1) Mr. McDonald has no confidential information;
- 10 2) Mr. McDonald will not compete with Mr. Gurson in the RoxyCar  
11 business through January 2020;
- 12 3) No confidential information provided to Mr. McDonald by Mr. Gurson  
13 will be disclosed to any third party;
- 14 4) Mr. McDonald will destroy any confidential information;
- 15 5) Mr. McDonald will not speak about the Roxycar business model to the  
16 extent he has any knowledge of it and such knowledge is confidential  
17 information;
- 18 6) Mr. McDonald will not use any confidential information provided to him  
19 to pursue the Roxycar business.”

20 A copy of this email is attached as Exhibit DD.

21 **123. Gurson Breaches the Settlement Agreement – April 17, 2017.**

22 124. The stipulation and order sent by Mr. Gossler differed in two major  
23 respects from the terms offered and agreed to settle the case against McDonald and  
24 Mrs. McDonald.

125. First, the stipulation included a release of all McDonald's claims against Gurson for compensation or for any stock ownership.

126. Second, the stipulation included an open-ended non-compete. This in contravention of all state laws and the original Confidentiality Agreement between the parties.

127. McDonald objected via Attorney Adams that the proposed stipulation was different than the agreed upon terms of settlement and in response Mr. Gossler responded:

"If Mr. McDonald chooses not to settle on the terms presented in the stipulation and order I provided to you, we have nothing further to discuss at this time."

A copy of the proposed stipulation and dismissal is attached as Exhibit EE.

A copy of Mr. Gossler's email confirming the breach of the settlement agreement is attached as Exhibit FF.

128. McDonald decided not to seek pro hac vice admission for Attorney Adams, and that it would be easiest and least expensive to proceed pro se.

129. McDonald is mindful of the threats to “sue him into bankruptcy” and believes this is all a bad faith attempt to bankrupt him and his family by an oddly vindictive Gurson, who McDonald believes breached his agreement, tried to steal McDonald’s expertise and business connections, messed up the company’s deal, and then went wild.

## ARGUMENT

130. It appears that Gurson, a used-car- salesman by trade, set off on a scheme to steal business knowledge, expertise, planning, negotiation and valuable contacts from McDonald.

1        131. It appears Gurson did not understand that a Term Sheet is preliminary,  
2 and after it was signed, he thought the deal was in the bag. Then he proceeded to  
3 renege on the 10% to McDonald that was agreed verbally and confirmed in emails  
4 and Company stock documents.

5        132. Gurson knew he had cheated McDonald, and so he threatened to sue  
6 him if he didn't take a low-ball settlement offer.

7        133. After Javelin refused to fund, Gurson became angry with McDonald  
8 despite the fact that McDonald always acted in the best interest of the company,  
9 helped Gurson personally and it was Gurson's breach that caused the failure of the  
10 deal.

11        134. Plaintiff performed from the start of the relationship on January 22,  
12 2017, through March 4, 2017 when Gurson breached.

13        135. Plaintiff invested significant time, resources and personal reputation  
14 performing his duties.

15        136. Gurson took the value of Plaintiff's services, and then reneged on the  
16 deal. First, he tried to whittle it down to 5% on February 25, 2017, and then he  
17 used his password to take over the company email of McDonald and effectively  
18 fire him.

19        137. Gurson referred to Plaintiff McDonald as a team member in Exhibit G  
20 on February 2, 2017 and issued him a company email. Under Gursen's request,  
21 McDonald represents the company to investors and other third parties using his  
22 company email by February 7 (see Exhibits F, G, H, I and M).

23        138. A meeting of the minds is clear. Neither McDonald nor Gurson would  
24 allow McDonald to exercise authority for the company in pitches, negotiations and  
25 planning if they had not reached an agreement.

1           139. By February 16, Gurson has agreed to hire Dr. Maymin and writes to  
2 McDonald and Dr. Maymin, "I'm excited to work with both of you!!" (Exhibit J).  
3 Gurson then announces the completed RoxyCar Executive team in emailing  
4 McDonald and Dr. Maymin (see Exhibit K). And he stated, "let's all give it all we  
5 have."

6           140. Again, a meeting of the minds is clear. Why would Gurson announce  
7 McDonald as part of the fully formed executive team that he "strongly" feels "has  
8 "everything it takes to make it happen" (Exhibit K) if they did not have an  
9 agreement?

10           141. McDonald's Employment Agreement included the agreed upon 10%  
11 to which Mr. Gurson replied "looks good." (Exhibit P).

12           142. If Gurson believed that no contract had been entered, or that the  
13 contract was different than 10% of the post-series seed investment, he would have  
14 protested the 10% reflected in that short, 1 page agreement. He did not.

15           143. In Exhibit Q, Gurson makes sure that McDonald's vesting schedule is  
16 not as favorable as his, but does not question the 10% grant.

17           144. Finally, the Corporate Questionnaire (Exhibit R) which was filled out  
18 together and sent to Mr. Gurson along with corporate counsel (Exhibit S) again  
19 stated McDonald's stock grant of 10%.

20           145. This was to be *the* documentation used to form the company and issue  
21 stock. Therefore, Gurson surely would not have allowed 10% to be listed for  
22 McDonald if he had not entered a contract. Instead he directed the completion and  
23 did not object after it was sent to corporate counsel.

1 146. Even Gurson's email notifying McDonald of the pending breach shows  
2 Gurson's mindset. He writes, "Now since things have changed I think that the 10  
3 percent equity does not properly represent our initial agreement" (Exhibit T).

4 147. Except, nothing had changed. Everything was the same. All that  
5 changed was Gurson thought the deal was "in the bag" and so he started trying to  
6 hedge on the terms.

7 148. The only "things" that have "changed" were McDonald had helped to  
8 pitch and negotiate a term sheet saving Gurson 12% dilution. The fact that Gurson  
9 references "the 10%" is evidence that a meeting of the minds had occurred on the  
10 10%.

11 149. McDonald undertook significant risk to himself and his wife and 4  
12 children by trusting Gurson and agreeing to bring all of his business and financial  
13 connections to the table. Now all that time is wasted, and the parties are in  
14 litigation because Gurson failed to threaten McDonald into a bad settlement, and  
15 made good on his threat to sue McDonald and his family into bankruptcy.

16 150. Gurson then offered terms of settlement that were accepted and then  
17 changed those terms to include a release of McDonald's claims and a infinite non-  
18 compete.

19 151. It is clear that the sole purpose of Gurson's action is to bully  
20 McDonald into a bad settlement and gain an infinite non-compete in contravention  
21 of state law.

22 152. Plaintiff seeks redress for the breach of contract, promissory estoppel,  
23 and unjust enrichment.



1 153. Plaintiff also seeks a dismissal of Gurson's action in accordance with  
2 the agreed upon settlement. Gurson's action has been removed to this court under  
3 supplemental jurisdiction.

4 **IV. FIRST CAUSE OF ACTION: BREACH OF CONTRACT**

5 154. There was a valid contract between Plaintiff and Gurson for 10% of  
6 RoxyCar.

7 155. Gurson breached that contract when he fired Plaintiff without cause  
8 and terminated the agreement (for no reason).

9 156. Gurson's breach caused Plaintiff to lose his 10% interest in RoxyCar.

10 157. According to Gurson, prior to any investment, RoxyCar is valued at  
11 \$14 million.

12 158. Plaintiff is damaged by Gurson's breach in the amount of \$1.4  
13 million.

14 **V. SECOND CAUSE OF ACTION: PROMISSORY ESTOPPEL**

15 159. Gurson made a promise to McDonald that he would grant him 10% of  
16 RoxyCar in exchange for McDonald's services to the company.

17 160. It was reasonable for McDonald to rely on that promise because  
18 Gurson acted in accordance with his promise, gave him no reason to question his  
19 honesty, and provided him with all that is expected for a corporate officer to have,  
20 including a company email and authority to negotiate with third parties and  
21 announced publicly multiple times that McDonald was a team member, an  
22 executive team member no less.

23 161. McDonald relied on the promise and spent considerable time,  
24 resources, expertise and credibility on the company.  
25

1 162. McDonald's reliance caused him to pass up multiple other promising  
2 opportunities.

3 163. Gurson's breach was detrimental to McDonald's reputation in the  
4 startup and technology community.

5 164. Injustice can only be prevented by enforcing Gurson's promise to give  
6 McDonald value representing 10% of RoxyCar.

7 **VI. THIRD CAUSE OF ACTION: UNJUST ENRICHMENT**

8 165. If for any reason, the court does not find the existence of a valid  
9 contract between Plaintiff and Gurson, Gurson was unjustly enriched by  
10 McDonald's services.

11 166. Many benefits were conferred upon Gurson by McDonald's services  
12 including (a) detailed plans for operations and technical enhancements to the  
13 existing platform (b) valuable business connections (c) valuable expertise in  
14 pitching potential investors and (d) valuable expertise in how to negotiate a term  
15 sheet.

16 167. It would be inequitable for Gurson to retain those benefits without  
17 compensating McDonald for their value.

18 **VII. PRAYER FOR RELIEF**

19 168. WHEREFORE, Plaintiff respectfully requests this Court enter a  
20 judgement:

21 A) Finding that Defendant Gurson had a valid contract with Plaintiff  
22 McDonald for 10% of RoxyCar;

23 B) Ordering Defendant Gurson to pay \$1,400,000 to Plaintiff representing  
24 10% of the current value of RoxyCar;

1 C) Granting monetary relief reflecting the fair value of the lost opportunities  
2 from the breached agreement;

3 D) Granting such equitable relief as may be appropriate or necessary to  
4 offset the unjust enrichment and detrimental reliance;

5 E) Dismissing the removed state court action against Mr. McDonald in  
6 accordance with the agreed upon terms of settlement; and

7 E) Court costs, attorney and filing fees and/or other such relief as the Court  
8 may deem necessary and proper.

9  
10  
11 Dated: May 9, 2017

12  
13 Respectfully Submitted,

14  
15 Brett McDonald

16 Brett McDonald, *pro se*

17  
18 **CERTIFICATE OF SERVICE**

19 I hereby certify that on May 9, 2017, I engaged AAA Legal Process Inc. and  
20 Brandywine Process Servers, Ltd. to personally serve Bora Gurson and RoxyCar  
21 Inc. with this Complaint For Money Damages; Breach of Contract; Promissory  
22 Estoppel and Unjust Enrichment as well as all Exhibits.

23  
24 s/ Brett McDonald  
25 Brett McDonald